IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 7TH NOVEMBER 2007 / 16TH KARTHIKA 1929

WP(C).No. 33095 of 2007(M)

AGAINST THE ORDER DATED 18/09/2007 IN IA 315/2005 IN OS.72/2003 of M.C.,VADAKKANCHERRY

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PETITIONER/PLAINTIFF:

SIVASANKARAN,S/O.KOTTARAPPATT
KARTHYAYANI, AGED 54 YEARS
VELLARKAD VILLAGE DESOM, THALAPPILLY TALUK.

BY ADV. SRI.C.A.CHACKO
SMT.C.M.CHARISMA
SRI.N.A.SHAFEEK

RESPONDENTS/DEFENDANTS:
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1. AMMALU AMMA
D/O. AMBALAPPATTVEETTIL NANIAMMA
VELLARKAD VILLAGE DESOM, THALAPPILLY TALUK.

2. RAMAN @ DEVARAJAN,
S/O.KARTHIYANI AMMA,
VELLARKAD VILLAGE DESOM, THALAPPILLY TALUK.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 07/11/2007 , THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N. KRISHNAN, J.

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W.P.C. NO. 33095 OF 2007

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Dated this the 7th day of November, 2007.

J U D G M E N T

This writ petition is filed by the petitioner against the order of the Munsiff, Wadakkanchery in I.A.315/05 in O.S.72/03. It was an application filed by the plaintiff to set aside the Commissioner's plan and report. The plaintiff is claiming 14 cents of land by virtue of a document No.304/99. The defendant is claiming 22 cents of property by virtue of a partition deed of the year 1965. The Commissioner after inspection submitted a report thereby he found that defendants are in possession of only 20.976 cents and that the plaintiff is in possession of 14 cents of land and the disputed property is shown as 1.024 cents of land. The question to be decided is who is entitled to this property. The plaintiff would submit that the Commissioner has not done the work correctly but the Court prima facie found that there are no materials to hold so. Therefore the Court held

that after the evidence if it is found that the measurements noted by the Commissioner are not correct, then the question of remitting/setting aside the Commissioner's plan and report etc. can be considered at that stage. Since the Court has already taken a view in that matter that on receipt of evidence to consider the question, I find no ground to interfere with the same but at the same time I make it very clear that the Court below shall when it is pointed out that there is mistake and there is some evidence in support of the same should consider this prayer before finally disposing of the matter.

The writ petition is disposed of accordingly.

M.N. KRISHNAN, JUDGE.

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